Submitted

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 556.

CHARLES FRANCIS, FOR THE USE OF NATHAN MYRICK, APPELLANT,

vs.

THE UNITED STATES.

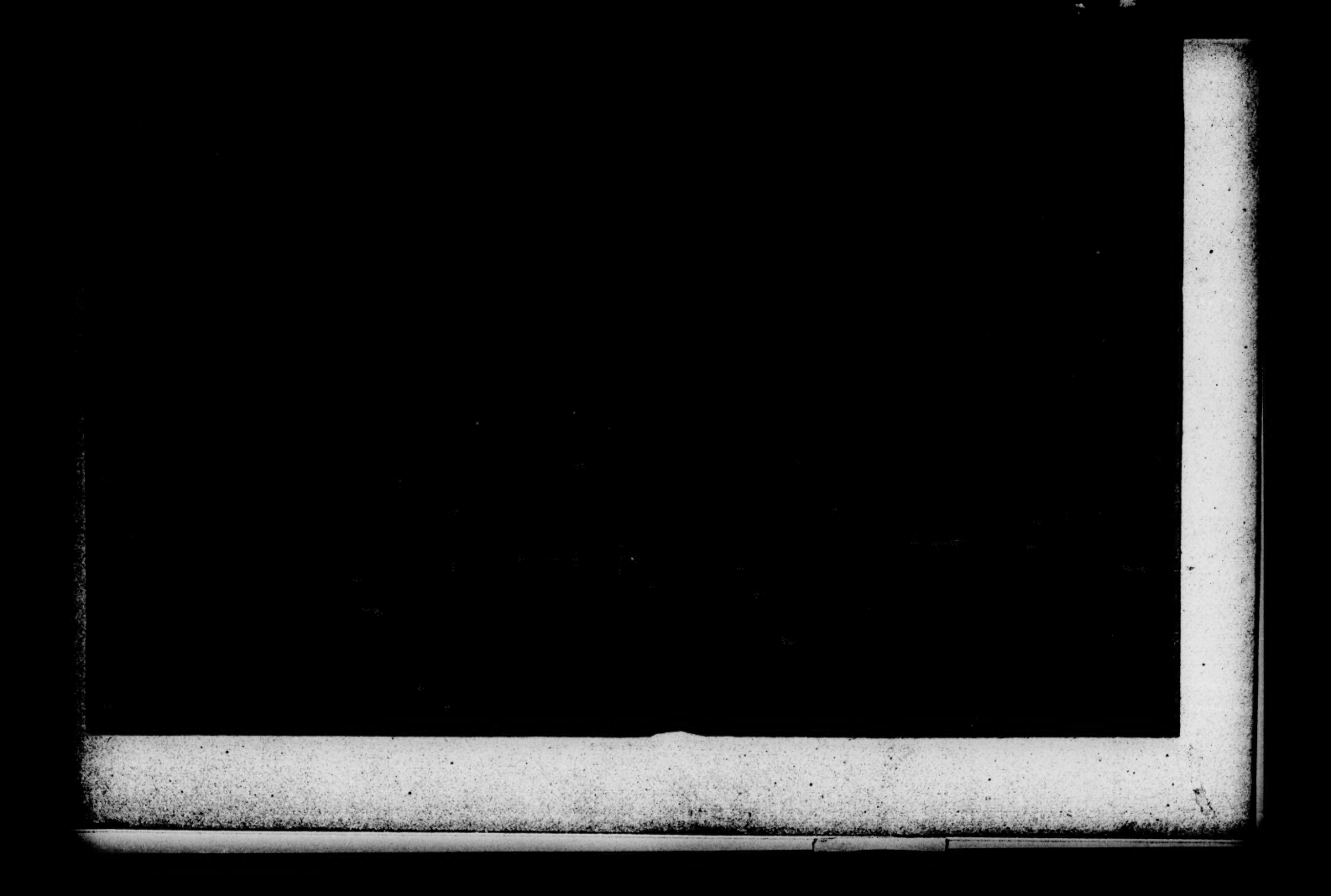
APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 16, 1875.

Jan 1/20 1876

Argued

Jan 31st



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1 Court of Claims of the United States, December term, 1871.

CHARLES FRANCIS, FOR THE USE OF NATHAN Myrick,
against
THE UNITED STATES. } No. 6426.

Petition.—Filed March 25, 1872.—J. R.

Charles Francis, respectfully complaining, shows to this honorable court, and states that he is a citizen of the United States, and a resident of the State of Minnesota, and that Nathan Myrick, for whose use this action is brought, is also a citizen of the United States, and resides at S't Paul, in the State of Minnesota; and that heretofore, on or about the eighth day of May, A. D. 1869, Lieutenant-Colonel S. B. Holabird, United States Army, and deputy quartermaster-general of said Army, and chief quartermaster of the Military Department of Dakota, in the military service of the United States of America, and acting for and on behalf of the United States, did make and enter into a contract and obligation in writing to and with the petitioner, Charles Francis, in the words and figures following, viz:

Articles of agreement entered into this eighth (8th) day of May, in the year of our Lord one thousand eight hundred and sixty-nine,
2 (1869,) between S. B. Holabird, deputy quartermaster-general, chief quartermaster of the Military Department of Dakota, an officer in the service of the United States of America, or his successor, of the first part, and Charles Francis, his heirs and assigns, of the city of Saint Paul, county of Ramsey, in the State of Minnesota, of the second part.

This agreement witnesseth that the said S. B. Holabird, deputy quartermaster-general United States Army, for and on behalf of the United States of America, and the said Charles Francis, for himself, his heirs, assignees, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other, as follows, viz:

I. That the said Charles Francis, his heirs, assignees, administrators, and executors, shall deliver, piled in the wood-yard at the following-named military posts, the number of cords of good, sound, merchantable oak wood, set opposite the name of each of said posts, respectively; also, shall deliver, stacked in the forage-yard, at the military post named below, the number of tons of good, sound, merchantable hay, set opposite the name o said post, viz:

Fort Totten, D. T., five hundred (500) cords of wood, more or less.

Fort Abercrombie, D. T., one thousand (1,000) cords of wood, more or less.

Fort Ransom, D. T., one thousand (1,000) cords of wood, more or less.

Fort Snelling, Minnesota, one hundred (100) tons of hay.

The wood in every instance to measure four (4) feet in length, to be delivered on or before the fifteenth (15th) day of January, 1870, the first delivery to be made on or before the first day of August, 1869, if needed. The hay to be cut when green, and properly cured; to be from weeds and sedges, or swamp grass, and deliverable by weight in all cases, and so certified on the voucher upon which payment is made. The hay all to be delivered by September 15th, 1869. Any reduction of the above-named quantities to be made only at the option of the Government.

II. That the said wood and hay shall be subject to such inspection as the said S. B. Holabird, deputy quartermaster-general United
3 States Army, party of the first part, may deem necessary to determine the quality, quantity, and condition at time of delivery, and whether the terms of this contract have been fully complied with. The inspection at each post shall be made by a board of officers, to consist of three company commanders, if present, or of such company commanders less than three and such company officers next in rank as shall complete the number; and no payment shall be made without the proceedings of such a board be attached to the voucher in each case, and compliance with General Order No. 45, Headquarters Department of Dakota, October 4th, 1868.

III. That in case of failure on the part of the said Charles Francis, his agents, heirs, and assignees, party of the second part, to deliver any part of the wood at Forts Totten, Abercrombie, and Ransom, D. T., and hay at Fort Snelling, Minn., as stipulated by this contract, then the said S. B. Holabird, deputy quartermaster-general United States Army, his agent or successor, party of the first part, shall have power to supply the deficiency, by purchase or otherwise, and the said Charles Francis, his heirs and assignees, party of the second part, shall pay the difference in the cost.

IV. That payment shall be made in customary manner, upon the delivery of the wood and hay as stipulated in article 1 of this agreement, provided the voucher is complete, approved by the commanding officer of the respective posts mentioned in article 1 of this agreement, and having a certificate that the wood has been measured and inspected, and the hay weighed and inspected as required by article 2 of this agreement, in the funds furnished by the United States for public disbursement, and in the event of the quartermaster contracting being without funds when payment is due, then payment shall be made as soon thereafter as funds shall be received by him for that purpose.

V. That the said Charles Francis, party of the second part, shall receive the following sums for each and every cord of wood and ton of hay delivered and accepted as stipulated in article 1 and 2 of this agreement, viz:

Wood at Fort Totten, D. T., four and $\frac{20}{100}$ dollars ($4.20) per cord.

Wood at Fort Abercrombie, D. T., four dollars ($4.00) per cord.

Wood at Fort Ransom, D. T., four and $\frac{20}{100}$ dollars ($4.20) per cord.

4 Hay at Fort Snelling, Minn., nine dollars ($9) per ton.

VI. That the said Charles Francis, party of the second part, shall be entitled to military protection at Forts Totten, Abercrombie, and Ransom, D. T., whenever, from the hostilities of the Indians, it may be deemed necessary by the commanding officer of the above-named posts respectively, whose duty it shall be to furnish such protection to the extent of his power; this stipulation to give no foundation for any claim against the Government for damages from the Indians or any detriment arising from their depradations or hostilities.

VII. It is expressly stipulated and agreed that no traders, sutlers, contractors, civilians, or others shall be allowed to cut timber about the posts of Forts Totten, Abercrombie, and Ransom, D. T., or grass about the post of Fort Snelling, Minn., until all required by the party of the second part, for purposes herein specified, shall have been secured; and it shall be the duty of the respective post commanders to carry out this stipulation, as made and provided in General Orders No. 18, Headquarters Department of Dakota, May 12th, 1868.

VIII. It is expressly stipulated and agreed between the parties to

this contract, that upon mutual agreement it may be changed, altered, modified, or abrogated, in whole or in part; but no such change, alteration, modification, or abrogation shall be interpreted as entitling the contractor to an increased rate over the rate specified in article V of this agreement.

That no member of Congress, officer or agent of the Government, or any person employed in the public service, shall be admitted to any share herein, or to any benefit which may arise herefrom.

That this contract is made subject to the approval of the commanding generals of the Department of Dakota, and of the Military Division of the Missouri.

In witness whereof the undersigned have hereunto placed their hands and seals the day and year first above written.

(Signed) S. B. HOLABIRD, [SEAL.]
Deputy Q. M. General, U. S. A.

(Signed) CHARLES his + mark. FRANCIS, [SEAL.]
City of St Paul.

5 In presence of—
(Signed) W. G. EVANS.
J. P. ALLEN.

A true copy.

S. B. HOLABIRD,
D. Q. M. General.

(Endorsed across the face in red ink:)
Approved—

W. S. HANCOCK,
Maj. Gen'l U. S. A.

Signed by—

R. CHANDLER,
A. A. A. G.

Which contract was thereupon approved by Major-General Hancock, commanding the Military Department of Dakota, and by Lieutenant-General Sheridan, commanding the Military Division of the Missouri, and was in all respects entered into, made, and executed as required by law.

And the claimant alleges that on or about the first day of June, A. D. 1869, for a valuable consideration to him paid by Nathan Myrick, he did sell, assign, and transfer to said Myrick all that portion and interest in said contract relating to or pertaining to furnishing wood for Fort Ransom, Dakota Territory; and that he did then and there authorize and fully empower said Nathan Myrick to execute and perform that portion of said contract and receive the pay and compensation therefor from the United States, in the same manner that he could have done if said assignment had not been made, nor said powers given; and that said assignment and powers are in writing, and have been filed in the War Department, and that he is therefore unable to produce the same. And the claimant avers that said Nathan Myrick succeeded to all the rights, privileges, and obligations that had vested in or attached to him under or by virtue of said contract.

6 And the claimant further alleges, that at the time the said deputy quartermaster-general advertised for proposals for furnishing said supplies, and at the time said contract was entered into, it was expressly understood by him and by said Deputy Quarter-

master-General S. B. Holabird, that the wood for Fort Ransom should all be cut on the military reservation, and within two miles of said fort and place of delivery, and that said Nathan Myrick so understood and had been so informed by said S. B. Holabird, deputy quartermaster-general, before he took the assignment of that portion of said contract, and that himself, said Deputy Quartermaster-General S. B. Holabird and said Nathan Myrick, all acted upon said understanding in making said contract and in assigning that portion of the same assigned to said Myrick, and that the proposal to furnish said wood, and the price to be paid for the same, was fixed and based upon the understanding that said wood could and would be cut upon said military reservation, within two miles of said fort and place of delivery.

And the claimant alleges that said Nathan Myrick, on or about the fifteenth day of June, A. D. 1869, did proceed to execute said contract so far as it pertained to supplying wood for Fort Ransom, according to the understanding and agreement aforesaid; and that when he had cut and prepared for delivery about forty cords of wood within one mile of said fort, the commanding officer of said fort, Captain L. M. Kellogg, prohibited the cutting of any of said wood upon said reservation, and compelled the claimant and his said assignee, Nathan Myrick, to cut said wood a distance of seven miles from said fort, and to draw the same said distance of seven miles instead of two miles, according to said understanding and agreement.

And the claimant alleges, that to draw said one thousand cords of wood from the points and for the distance where it was understood by all parties that the same was to be cut when said contract was made, would have required one team of oxen or horses five hundred and
7 thirty-three days, and no more; and that it required one team of oxen or horses or its equivalent one thousand and sixty-six days to draw said one thousand cords of wood from the point and place where he and his said assignee were compelled to cut and did cut the same under the orders of the said post-commander; and the claimant alleges that the cost and value of one team for each day employed is five dollars, and that he was injured and has sustained damage in and by the premises two thousand six hundred and sixty-five dollars.

And complainant further alleges, that after said wood was cut and ready to be hauled to said Fort Ransom, the said post-commander of Fort Ransom, L. M. Kellogg, in the exercise of his authority as captain in the United States Army and commander of said military post of Fort Ransom, acting for and on behalf of the United States, did prohibit and prevent by positive military orders nine teams of said Nathan Myrick from hauling said wood, and compel them to remain idle for thirteen days, from the ninth day of September, A. D. 1869, to the twenty-third day of September, A. D. 1869, and that thereby he was deprived of the services of said teams and each and all of them during all said time, and that during the time and at the place aforesaid the use and time of each team was worth five dollars per day, in all, the sum of five hundred and eighty-five dollars, and whereby he sustained damage in the further sum of five hundred and eighty-five dollars.

And the claimant further alleges, that prior to the first day of November, A. D. 1870, he made and filed a claim for the damages hereinbefore alleged and set forth, in the Quartermaster's Department, United States Army, and that such proceedings were had thereon, that on the 18th day of September, A. D. 1871, the Secretary of War referred the same to the Quartermaster-General for settlement; and that thereafterward, on the 25th day of September, A. D. 1871, the Quartermaster-

General, United States Army, referred and transmitted the same
8 to the Third Auditor of the Treasury for settlement; and thereafterwards, and on the 26th day of December, A. D. 1871, the Third Auditor of the Treasury did reject and disallow said claim, which decision is hereto attached, marked "Exhibit A," and made part of this petition.

And the claimant further alleges that both himself and said Nathan Myrick have at all times borne true allegiance to the Government of the United States, and have not in any way, voluntarily or otherwise, aided, abetted, or given encouragement to the rebellion against the said Government.

Wherefore the claimant demands judgment against the United States for the sum of three thousand two hundred and fifty dollars, for the use of said Nathan Myrick.

SANBORN & KING,
Attorneys for Claimant.

DISTRICT OF COLUMBIA,
County of Washington, ss:

John B. Sanborn, being first duly sworn, deposes and says that he is one of the attorneys in the above-entitled cause, and that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made except as in said petition stated; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true.

JOHN B. SANBORN.

Sworn to and subscribed before me, this 25th day of March, A. D. 1872.

JOHN RANDOLPH,
Ass't Clk C't of Claims.

Post-office address of claimant: Saint Paul, Minnesota.
Post-office address of attorneys: Washington, District of Columbia.

9 *Exhibit A, referred to in petition.*

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
December, 1871.

Messrs. BIGELOW, FLANDRAU & CLARK,
Attorneys at Law, St Paul, Minn.:

GENTLEMEN: In the matter of the claim (No. 23439) made by Charles Francis, to be re-imbursed for extra expenses in performing his contract of 8th May, 1869, to deliver wood at Fort Ransom, D. T., you are informed that on the 26th December, 1871, I rendered my decision, that the accounting officers of the Treasury have not jurisdiction. If you desire to appeal to the Second Comptroller, you must so notify me within six months from the date of the decision.

Mr. Francis claimed the right, under his contract, to cut the wood on the reservation belonging to the fort. The government officers denied this claim, and compelled him to go outside. He delivered and was paid for the full amount specified by the contract. His present claim being for the damage, in the shape of extra expenses, caused by the alleged interference with these rights, the case is clearly of the character of a claim for unliquidated damages, and of such claims it has long

been settled that the accounting-officers of the Treasury have not jurisdiction.

Very respectfully,

ALLAN RUTHERFORD,
Auditor.

10 In the Court of Claims of the United States, December term, A. D. 1871.

CHA'S FRANCIS, FOR USE, &C., *vs.* THE UNITED STATES. } No. 6426.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of three thousand two hundred and fifty dollars, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, denies the said allegation.

W'M McMICHAEL,
Assistant Attorney-General.

Filed May 25, 1872.

11 Court of Claims of the United States, December term, 1871.

CHARLES FRANCIS, FOR THE USE OF NATHAN Myrick, *against* THE UNITED STATES. } No. 6426. Original petition.—Filed March 25, 1872.—J. R.

Amended petition.—Allowed & filed Dec. 1, 1873.—*J. R.*

Charles Francis, respectfully complaining, shows to this honorable court and states that he is a citizen of the United States and a resident of the State of Minnesota, and that Nathan Myrick, for whose use this action is brought, is also a citizen of the United States, and resides at St Paul, in the State of Minnesota; and that heretofore, on or about the eighth day of May, A. D. 1869, Lieutenant Colonel S. B. Holabird, United States Army, and deputy quartermaster-general of said Army, and chief quartermaster of the military department of Dakota, in the military service of the United States of America, and acting for and on behalf of the United States, did make and enter into a contract and obligation, in writing, to and with the petitioner, Charles Francis, in the words and figures following, viz:

12 Articles of agreement entered into this eighth (8th) day of May, in the ye. r of our Lord one thousand eight hundred and sixty-nine, (1869,) between S. B. Holabird, deputy quartermaster-general, chief quartermaster of the military department of Dakota, an officer in the service of the United States of America, or his successor, of the first part, and Charles Francis, his heirs and assignees, of the city of Saint Paul, county of Ramsey, in the State of Minnesota, of the second part.

This agreement witnesseth that the said S. B. Holabird, deputy quartermaster-general, United States Army, for and on behalf of the United

States of America, and the said Charles Francis, for himself, his heirs, assignees, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other, as follows, viz:

I. That the said Charles Francis, his heirs, assignees, administrators, and executors, shall deliver, piled in the wood-yard at the following-named military posts, the number of cords of good, sound, merchantable oak wood set opposite the name of each of said posts, respectively; also shall deliver, stacked in the forage-yard at the military post named below, the number of tons of good, sound, merchantable hay set opposite the name of said post, viz:

Fort Totten, D. T., five hundred (500) cords of wood, more or less.

Fort Abercrombie, D. T., one thousand (1,000) cords of wood, more or less.

Fort Ransom, D. T., one thousand (1,000) cords of wood, more or less.

Fort Snelling, Minnesota, one hundred (100) tons of hay.

The wood in every instance to measure four (4) feet in length, to be delivered on or before the fifteenth (15th) day of January, 1870, the first delivery to be made on or before the first day of August, 1869, if needed.

The hay to be cut when green, and properly cured; to be free
13 from weeds and sedges or swamp-grass, and deliverable by weight in all cases, and so certified on the voucher upon which payment is made. The hay all to be delivered by September 15th, 1869. Any reduction of the above-named quantities to be made only at the option of the Government.

II. That the said wood and hay shall be subject to such inspection as the said S. B. Holabird, deputy quartermaster-general, United States Army, party of the first part, may deem necessary to determine the quality, quantity, and condition at time of delivery, and whether the terms of this contract have been fully complied with. The inspection at each post shall be made by a board of officers, to consist of three company commanders, if present, or of such company commanders less than three, and such company officers next in rank as shall complete the number; and no payment shall be made without the proceedings of such a board be attached to the voucher in each case, and compliance with General Order No. 45, Headquarters Department of Dakota, October 4th, 1868.

III. That in case of failure on the part of the said Charles Francis, his agents, heirs, and assignees, party of the second part, to deliver any part of the wood at Forts Totten, Abercrombie, and Ranson, D. T., and hay at Fort Snelling, Minn., as stipulated by this contract, then the said S. B. Holabird, deputy quartermaster-general, United States Army, his agent or successor, party of the first part, shall have power to supply the deficiency, by purchase or otherwise, and the said Charles Francis, his heirs and assignees, party of the second part, shall pay the difference in the cost.

IV. That payment shall be made in customary manner, upon the delivery of the wood and hay as stipulated in article 1 of this agreement, provided the voucher is complete, approved by the commanding
14 officer of the respective posts mentioned in article one of this agreement, and having a certificate that the wood has been measured and inspected, and the hay weighed and inspected, as required by article 2 of this agreement, in the funds furnished by the United States for public disbursement, and in the event of the quartermaster contracting being without funds when payment is due, then payment shall be made as soon thereafter as funds shall be received by him for that purpose.

V. That the said Charles Francis, party of the second part, shall receive the following sums for each and every cord of wood and ton of hay delivered and accepted, as stipulated in article 1 and 2 of this agreement, viz:

Wood at Fort Totten, D. T., four and $\frac{20}{100}$ dollars ($4.20) per cord.
Wood at Fort Aber'combie, D. T., four dollars ($4) per cord.
Wood at Fort Ransom, D. T., four and $\frac{20}{100}$ dollars ($4.20) per cord.
Hay at Fort Snelling, Minn., nine dollars ($9) per ton.

VI. That the said Charles Francis, party of the second part, shall be entitled to military protection at Forts Totten, Abercrombie, and Ransom, D. T., whenever from the hostilities of the Indians it may be deemed necessary by the commanding officer of the above-named posts, respectively, whose duty it shall be to furnish such protection to the extent of his power; this stipulation to give no foundation for any claim against the Government for damages from the Indians or any detriment arising from their depredations or hostilities.

VII. It is expressly stipulated and agreed that no traders, sutlers, contractors, civilians, or others shall be allowed to cut timber about the post of Forts Totten, Abercrombie, and Ransom, D. T., or grass
15 about the post of Fort Snelling, Minn., until all required by the party of the second part, for purposes herein specified, shall have been secured; and it shall be the duty of the respective post commanders to carry out this stipulation, as made and provided in General Orders No. 18, Headquarters Department of Dakota, May 12th, 1868.

VIII. It is expressly stipulated and agreed between the parties to this contract that upon mutual agreement it may be changed, altered, modified, or abrogated, in whole or in part; but no such change, alteration, modification, or abrogation shall be interpreted as entitling the contractor to an increased rate over the rate specified in article V of this agreement.

That no member of Congress, officer or agent of the Government, or any person employed in the public service, shall be admitted to any share herein, or to any benefit which may arise herefrom.

That this contract is made subject to the approval of the commanding generals of the department of Dakota and of the military division of the Missouri.

In witness whereof the undersigned have hereunto placed their hands and seals the day and year first above written.

(Signed) S. B. HOLABIRD, [SEAL.]
Deputy Q. M. General, U. S. A.

(Signed) CHARLES his × mark. FRANCIS, [SEAL.]
City of St. Paul.

In presence of—
(Signed) W. G. EVANS.
J. P. ALLEN.

A true copy.

S. B. HOLABIRD,
D. Q. M. General.

16 Endorsed across the face in red ink:
Approved.

W. S. HANCOCK,
Major-Gen., U. S. A.

Signed by

R. CHANDLER,
A. A. A. G.

Which contract was thereupon approved by Major-General Hancock, commanding the military department of Dakota, and by Lieutenant-General Sheridan, commanding the military division of the Missouri, and was in all respects entered into, made, and executed as required by law.

And the claimant further alleges that at the time the said deputy quartermaster-general advertised for poposals for furnishing said supplies, and at the time said contract was entered into, it was expressly understood by him and by said deputy quartermaster-general, S. B. Holabird, that the wood for Fort Ransom should all be cut on the military reservation and within two miles of said fort and place of delivery, and that himself and said deputy quartermaster-general, S. B. Holabird, acted upon said understanding in making said contract, and that the proposal to furnish said wood, and the price to be paid for the same, was fixed and based upon the understanding that said wood could and would be cut upon said military reservation, within two miles of said fort and place of delivery.

And the claimant alleges that on or about the fifteenth day of June, A. D. 1869, he did proceed by his agents and servants to execute said contract so far as it pertained to supplying wood for Fort Ransom, according to the understanding and agreement aforesaid; and that when he had cut and prepared for delivery about forty cords of wood within one mile of said fort, the commanding officer of said fort, Captain
17 L. M. Kellogg, prohibited the cutting of any of said wood upon said reservation, and compelled the claimant and his agents and servants to cut said wood a distance of seven miles from said fort, and to draw the same said distance of seven miles instead of two miles, according to said understanding and agreement.

And the claimant alleges that to draw said one thousand cords of wood from the points and for the distance where it was understood by both parties that the same was to be cut when said contract was made, would have required one team of oxen or horses five hundred and thirty-three days, and no more; and that it required one team of oxen or horses or its equivalent one thousand and sixty-six days to draw said one thousand cords of wood from the point and place where he *and* was compelled to cut and did cut the same, under the orders of the said post commander; and the claimant alleges that the cost and value of one team for each day employed is five dollars, and that he was injured and has sustained damage in and by the premises two thousand six hundred and sixty five dollars.

And complainant further alleges that after said wood was cut and ready to be hauled to said Fort Ransom the said post commander of Fort Ransom, L. M. Kellog, in the exercise of his authority as captain in the United States Army and commander of said military post of Fort Ransom, acting for and on behalf of the United States, did prohibit and prevent by positive military orders nine teams in his employ from hauling said wood, and compelled them to remain idle for thirteen days, from the ninth day of September A. D. 1869, to the 23d day of September, 1869, and that thereby he was deprived of the services of said teams and each and all of them during all said time, and that during the time and at the place aforesaid the use and time of each team was worth five dollars per day, in all the sum of five hundred and eighty-five dollars, and whereby he sustained damage in the further sum of five hundred and eighty-five dollars.

18 And the claimant further alleges that prior to the first day of November, A. D. 1870, he made and filed a claim for the damages

hereinbefore alleged and set forth in the Quartermaster's Department, United States Army, and that such proceedings were had thereon that on the 18th day of September, A. D. 1871, the Secretary of War referred the same to the Quartermaster-General for settlement; and that thereafterward, on the 25th day of September, A. D. 1871, the Quartermaster-General United States Army referred and transmitted the same to the Third Auditor of the Treasury for settlement; and thereafterwards, on the 26th day of December, A. D. 1871, the Third Auditor of the Treasury did reject and disallow said claim, which decision is hereto attached, marked "Exhibit A," and made part of this petition.

And the claimant further alleges that, in consideration of money advanced, labor performed, and material furnished to him in the performance of said contract by Nathan Myrick, he has transferred this claim and the money to be recovered thereon to said Nathan Myrick, and authorized him to collect the same for his own use.

And the claimant further alleges that both himself and said Nathan Myrick have at all times borne true allegiance to the Government of the United States, and have not in any way, voluntarily or otherwise, aided, abetted, or given encouragement to the rebellion against the said Government.

Wherefore the claimant demands judgment against the United States for the sum of three thousand two hundred and fifty dollars, for the use of said Nathan Myrick.

SANBORN & KING.
Attorneys for Claimant.

19 DISTRICT OF COLUMBIA,
County of Washington, ss:

John B. Sanborn, being first duly sworn, deposes and says that he is one of the attorneys in the above-entitled cause, and that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said *in said* petition stated; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true.

JOHN B. SANBORN.

Sworn to and subscribed before me this 3rd day of October, A. D. 1873.

CHAS. C. CALLAN,
Notary Public, District of Columbia.

Post-office address of claimant, Saint Paul, Minnesota.
Post-office address of attorneys, Washington, District of Columbia.

Exhibit A, referred to in petition.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
December, 1871.

Mess'rs BIGELOW, FLANDRAU & CLARK,
Attorneys at law, St Paul, Minn.:

GENTLEMEN: In the matter of the claim (No. 23439) made by Charles Francis, to be re-imbursed for extra expenses in performing his contract of 8th May, 1869, to deliver wood at Fort Ransom, D. T., you are informed that on the 26th December, 1871, I rendered my decision that

the accounting-officers of the Treasury have not jurisdiction. If you desire to appeal to the Second Comptroller, you must so notify me within six months from the date of the decision.

20 M'r Francis claimed the right under his contract to cut the wood on the reservation belonging to the fort. The Government officers denied this claim and compelled him to go outside. He delivered and was paid for the full amount specified by the contract. His present claim being for the damage, in the shape of extra expenses, caused by the alleged interference with these rights, the case is clearly of the character of a claim for unliquidated damages, and of such claims it has long been settled that the accounting-officers of the Treasury have not jurisdiction.

Very respectfully,

ALLAN RUTHERFORD,
Auditor.

21 In the Court of Claims.

CHARLES FRANCIS, FOR THE USE OF NATHAN Myrick,
vs.
THE UNITED STATES. } 6426.

At a Court of Claims, held at the Capitol, in the city of Washington, the 6th day of March, A. D. 1876, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said claimant's petition be dismissed.

By the court.

22 Court of Claims.

CHARLES FRANCIS, FOR THE USE OF NATHAN Myrick,
vs.
THE UNITED STATES. } No. 6126.

And now comes the claimant, by his attorneys, Sanborn and King, and moves for an appeal from the decision and judgment of this court in the above-entitled cause to the Supreme Court of the United States.

SANBORN AND KING,
Claimant's Attorneys.

Filed April 6, 1876.

Ordered, that the appeal be allowed as prayed for.

By the court.

APRIL 6, 1876.

23 Court of Claims.

CHARLES FRANCIS, FOR THE USE OF NATHAN Myrick,
vs.
THE UNITED STATES. } No. 6426.

Findings of fact.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

1. On the 8th of May, 1869, the chief quartermaster of the military

Department of Dakota and the claimant Francis entered into the written contract set forth in the petition. This contract was made after due advertisement, and was approved in writing by the chief quartermaster of the military division, by the major-general commanding said division, and by the Lieutenant-General.

2. The order referred to in the seventh article of the contract was as, follows:

"HEADQUARTERS DEPARTMENT OF DAKOTA,
"*Saint Paul, Minn., May* 12, 1868.

[General Orders No. 18.]

"Post commanders in this department will assume control of all timber, wood, hay, and grazing upon the public lands adjacent to their respective posts which are required for the public use thereat. Notice of the reservation of the timber, wood, &c., thus made will be thoroughly circulated in the manner best calculated to inform all who are or may become interested, in order to avoid all disputes of rights which might arise through ignorance.

"On all such reservations sutlers, traders, and civilians generally will not be allowed to cut timber, wood, nor hay, nor be allowed to graze animals, until the wants of the garrison are supplied for the year.

"By command of B'v't Maj. General Terry.

"O. D. GREENE,
"*Assistant Adjutant-General.*"

The post of Fort Ransom was situated on the public domain, surrounded by the public lands of the United States. On the 18th of May 1869, the following order was issued by the assistant adjutant-general of the department of Dakota:

"HEADQUARTERS DEPARTMENT OF DAKOTA,
"*St Paul, Minn., May* 18, 1869.

[General Orders No. 42.]

"Subject to the approval of the Secretary of War, the public lands inclosed by the hereinafter-described survey are hereby reserved to the United States for military purposes, and declared to be the military reservation of the post of Fort Ransom.

24 "The initial point is eight (8) miles due south of the southwest angle of the fort; thence due east five (5) miles; thence due north ten (10) miles; thence due west ten (10) miles; thence due south ten (10) miles; thence due east five (5) miles to the initial point. The corners are marked by mounds erected over a post set in the ground, and similar marks are made where the line crosses the river. Under the direction of the post commander, at the apex of each of the angles of the square above described, a square cut stone, one (1) foot on the edge and three and one-half (3½) feet in length, will be firmly imbedded eighteen inches in the ground. On the inner face of each stone the letters 'U. S.' will be chiselled in raised letters; on the corner face of each stone will be painted or cut the words 'Military Reservation.'

"By command of Maj. Gen. W. S. Hancock:

"O. D. GREEN,
"*Assistant Adjutant-General.*"

This order bears the following indorsements:

"WAR DEPARTMENT,
"*January* 11, 1870.

"Approved and respectfully submitted for the action of the President.
"W'M *S.* BELKNAP,
"*Secretary of War.*"

"EXECUTIVE MANSION,
"*January* 11, 1870.

"The reservation of Fort Ransom, Dakota Territory, as declared by General Orders No. 42, Headquarters Department of Dakota, May 18, 1869. and described in the accompanying plat and notes of survey, approved by the Secretary of War, is made for military purposes, and the Secretary of the Interior will cause the same to be noted in the General Land-Office, to be reserved as a military post.

"U. S. GRANT,
"*President.*"

4. Prior to June 1, 1869, but near that time, the claimant, by his agent and employés, commenced cutting wood on said reservation, at a point about a mile and a half from the fort, and had cut at that place about 40 cords of wood for said post under said contract, when he was ordered by Colonel Hall, then the post commander, to desist and to remove beyond the lines of the reservation. He then removed to a point within the reservation, about four miles from the fort, and there cut 310 cords of wood, when Major Kellogg, who, on the 10th of June, 1869, had succeeded Colonel Hall as post commander, ordered him to stop cutting at that place, to move off the reservation, and not to cut any wood within the lines thereof, but to cut wherever he pleased outside of the same. The contractor, by his agent, Myrick, then and there claimed the right under his contract to cut on the reservation, which claim the post commander refused to recognize, and denied. Thereupon the claimant proceeded to cut the balance of the wood required to be furnished by him, at a point about seven miles from the fort, and from half a mile to a mile beyond the lines of the reservation, and there cut 650 cords.

5. Some time in September, 1869, the claimant commenced hauling to the fort the wood which he had cut on the reservation, at a point four miles from the fort, when the post commander stopped the work and would not permit him to haul the wood because it had been cut within the lines of the reservation, in disobedience of positive orders.

The claimant appealed to General Hancock, who overruled the post commander; decided that the contractor had a right to cut wood on the reservation, and to haul that which had been so cut. By reason of this order of the post commander nine teams of the claimant remained idle thirteen days, to the expense of the claimant of $468, but it does not appear that he might not have employed said teams during that time in hauling the wood cut off the reservation, which he was not prohibited from moving.

6. There was sufficient wood on the reservation for the known wants of the post, and the claimant could have obtained, either at or near the place where he cut the first 40 cords of wood, a mile and a half from the fort, or at the place where he cut the 310 cords, four miles from the fort, the whole quantity required by the contract, had he not been interfered with by the orders of the post commanders.

7. And by reason of said orders, and by being compelled thereby to cut the remaining quantity of wood at greater distances from the fort, he

was subjected to additional expenses in hauling the same to the place of delivery, as follows: Additional expense of hauling 310 cords, cut within the reservation, four miles to the fort, $688.48, and of hauling 650 cords cut outside of the reservation, seven miles to the fort, $1,443.52, over and above what he would have incurred in hauling the same quantity from said place where he first began to cut.

It does not appear how much more expense, if any, the claimant was subjected to by reason of cutting the 650 cords outside of the reservation over and above what he would have incurred had he been permitted to cut the same within the reservation at the place where he cut the 310 cords, and from which he was ordered away by Post Commander Kellogg.

8. All the work under this contract was done by Nathan Myrick, for whose use this action is brought, as agent for and in the name of the claimant Francis, who executed and delivered to said Myrick a power of attorney, of which the following is a copy:

"Know all men by these presents that I, Charles Francis, of Saint Paul, Minnesota, have appointed, and by these presents do make, constitute, and appoint, Nathan Myrick, of the same place, my true and lawful attorney, for me and in my name, place, and stead, do hereby authorize the said Nathan Myrick to take and receive all vouchers, and the same sign and draw the money thereon, under a certain contract between myself of the one part, and the United States, by Gen'l Holabird, deputy quartermaster-general, of the other part, dated May 8th, 1869, for the delivery at Fort Ransom, in Dakota Territory, of one thousand cords of wood; granting unto my said attorney full power to perform everything whatsoever required and necessary to be done, as I might or could do if personally present, without revocation.

"In witness whereof I have hereunto set my hand and seal the thirty-first day of May, in the year one thousand eight and sixty nine.

"CHARLES his + mark. FRANCIS. [SEAL.]

"Witness as to Charles Francis' mark—

"SAMUEL MAYALL.

"Signed, sealed, and delivered in presence of—

"J. P. ALLEN.

"J. A. ALLEN.

[Two 25 cts. stamps affixed.]

26 "STATE OF MINNESOTA,

"*County of Ramsey:*

"Be it known that on this 31st day of May, A. D. 1869, before me personally appeared Charles Francis, to me known to be the individual person described in and who executed the foregoing power of attorney, and he acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein expressed.

"The erasure, before signing, from the word necessary.

"C. h. + m. F.

[SEAL.] "J. P. ALLEN,

"*Notary Public, Min.*"

9. The claimant has been paid for 1,003 cords of wood, delivered under the contract, the money therefor having been paid at different

times to said Myrick, who receipted therefor as "attorney in fact" of said Francis, in full for the quantity delivered.

10. In consideration of money advanced, labor performed, and materials furnished, said Francis has transferred this claim and the money to be recovered thereon to said Myrick, and has authorized him to collect the same to his own use, and to bring this action in the name of said Francis, to his, the said Myrick's, use.

It does not appear that said Myrick has had any interest in the contract other than that hereinbefore set forth.

CONCLUSION OF LAW.

That, on the foregoing facts, the claimant is not entitled to recover, and his petition must be dismissed.

RICHARDSON, J., delivered the opinion of the court:

On the 8th day of May, 1869, the claimant Francis entered into a written contract with the chief quartermaster of the military department of Dakota Territory, by which, among other things, he agreed to deliver at the post of Fort Ransom one thousand cords of wood, at the price therein agreed upon, on or before the 1st day of January then next—the first delivery to be on or before the 1st day of August, 1869.

At the very commencement of proceedings under this contract, said Francis executed and delivered to Nathan Myrick a power of attorney, of which the following is a copy:

"Know all men by these presents that I, Charles Francis, of Saint Paul, Minnesota, have appointed, and by these presents do make, constitute, and appoint Nathan Myrick, of the same place, my true and lawful attorney, for me and in my name, place, and stead, do hereby authorize the said Nathan Myrick to take and receive all vouchers, and the same sign and draw the money thereon, under a certain contract between myself of the one part, and the United States, by Gen'l Holabird, Deputy Quartermaster-General, of the other part, dated May 8th, 1869, for the delivery at Fort Ransom, in Dakota Territory, of one thousand cords of wood; granting unto my said attorney full power to perform everything whatsoever required and necessary to be done, as I might or could do if personally present, without revocation.

27 "In witness whereof I have hereunto set my hand and seal the thirty-first day of May, in the year one thousand eight and sixty-nine.

his
"CHARLES + FRANCIS. [SEAL.]
mark.

"Witness as to Charles Francis' mark—
"SAMUEL MAYALL.
"Signed, sealed, and delivered in presence of—
"J. P. ALLEN,
"J. A. ALLEN."

[Two 25 c'ts stamps affixed.]

Said Myrick did all the work under the contract, delivered the 1,000 cords of wood, received payment therefor at different times, and gave receipts "as the attorney in fact" of said Francis, in full for the quantity delivered, and in consideration of money advanced, labor performed, and materials furnished, said Francis transferred the claim, for which

this action is brought, to Myrick, and authorized him to collect the same, and to bring this action to his own use.

The question presented for our determination upon this part of the case is, whether or not those facts prove such a transfer of the contract or any interest therein as to cause the annulment thereof, so far as the defendants are concerned, under the provisions of the act of July 17, 1862, § 14, (12 Stat. at Large, 596; Revised Statutes, § 3737,) which is as follows:

"That no contract or order, or any interest therein, shall be transferred by the party or parties to whom such contract or order may be given to any other party or parties, and that any such transfer shall cause the annulment of the contract or order transferred so far as the United States are concerned: Provided, That all rights are hereby reserved to the United States for any breach of such contract by the contracting party or parties."

The obvious reason for this enactment was to secure to the United States the personal attention and services of the contractor, and to render him liable to punishment under the sixteenth section of the same act for any fraud or willful neglect of duty, and the more effectually to accomplish the latter purpose it was enacted in the sixteenth section of the same act that every such contractor should be deemed and taken as part of the land or naval forces of the United States, and subject to the rules and regulations thereof.

No technical formal written transfer of the contract was proved in this case, nor would any such be likely to be made by parties knowing the stringent provisions of the statute, even if an assignment in fact were agreed upon between them. It is sufficient to annul the contract, if the facts disclose a substantial transfer of an interest therein, by whatever means attempted, or however much disguised. In the case of McCord vs. The United States, 9 C. C. R., 156, the only evidence of an assignment was the averment in the petition that a third party was the equitable owner of one-third interest in the contract, and this court held that the contract was annulled thereby. In Wheeler vs. The United States, 5 C. C. R., 504, which was a case in some respects similar to this, Judge Milligan, referring to the statute, well said that it was "broad and comprehensive in its terms, and not to be evaded by refined subtleties or ingenious argument."

Here, in the case at bar, was given to Myrick an irrevocable power of attorney "to take and receive all vouchers, and sign the same,
28 and draw the money thereon," in the name of Francis, with "full power to perform everything whatsoever required and necessary to be done." This was a full and complete assignment of an important interest, covering all the money payable by the defendants for the wood to be delivered, and, being irrevocable, it was an attempt to take from the contractor the whole direct power and control over the material resources to be derived from a faithful performance of his agreements.

When we take into consideration other facts in the case, the reason for giving this power of attorney, and its intended force and effect as an assignment, become still more apparent. Myrick not only did all the work under the contract, delivered all the wood, and received all money paid by defendants, but now brings this action to recover damages, an unliquidated, uncertain, and disputed claim, for being interfered with in the performance of his work. With the making of the contract and giving the irrevocable power of attorney, Francis wholly disappears from the case, and Myrick becomes the only person having further dealings with the Government officers concerning the business. And yet

Myrick could not be deemed and taken to be a part of the Army of the United States, and subject to punishment, under section 16 of the act of July 17, 1862, for fraud or neglect of duty as therein provided respecting contractors.

We think, also, that the statute forbidding transfers was passed with a still further object—to secure Government contracts to bona-fide contractors, who intended to perform the duties, as well as to assume the liabilities thereof, and to prevent parties from acquiring mere speculative interests, which are demoralizing and lead to irregularities and fraud.

We are all of opinion that the claim of the petitioner's counsel, that Myrick was only an employé of Francis, is not supported by the natural and reasonable inferences to be drawn from the facts, but that, on the contrary, upon all the facts found by the court, it is sufficiently shown that he had a direct and irrevocable interest in the contract transferred to him by the original contractor. This caused an annulment of the contract as to any rights of both or either of them thereunder against the defendants, and bars a recovery in this action, even if there were a good cause of action but for this assignment, as to which it is not necessary to express an opinion.

The judgment of the court is that the claimant's petition be dismissed.

29 Court of Claims, Dec. term, 1875.

CHARLES FRANCIS, FOR THE USE OF NATHAN Myrick, *vs.* THE UNITED STATES. } No. 6426.

The claimant respectfully asks the court to find, as an additional fact to those found in the findings filed, what the understanding was, at the time said contract was made, between the claimant and the agent of the defendants, "Holabird," as to the distance from Fort Ransom, where said wood could and would be cut.

SANBORN AND KING,
Claimant's Att'ys.

Filed M'ch 3, 1876.

Upon the foregoing request for an additional finding, the court makes the following ruling, to wit:

Disallowed.

By the court.

30 In the Court of Claims.

CHARLES FRANCIS, FOR THE USE OF NATHAN Myrick, *vs.* THE UNITED STATES. } No. 6426.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the solicitors for claimant for the allowance of an appeal, as filed in the clerk's office April 6, 1876, and of the order of the

said Court of Claims allowing the same; of the findings of fact by the court, and the conclusion of law thereon upon which the court rendered its judgment; of the opinion of the court, and of the request of claimant for an additional finding of fact, with the ruling of the court thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this twelfth day of May, A. D. 1876.

[SEAL.] JOHN RANDOLPH.
Ass't Clerk Court of Claims.

(Endorsement on cover:) No. 556. Charles Francis, for the use of Nathan Myrick, appellant, vs. The United States. Court of Claims. Filed 16th October, 1876.

Supreme Court of the United States.

OCTOBER TERM, 1877.

No. 556.

CHARLES FRANCIS, FOR THE USE OF NATHAN MYRICK,

Appellant,

vs.

THE UNITED STATES,

Respondent.

ARGUMENT OF APPELLANT.

JOHN B. SANBORN,
Att'y for Appellant.

Pioneer Press.

Supreme Court of the United States.

OCTOBER TERM, 1877. No. 556.

CHARLES FRANCIS FOR THE USE OF NATHAN MYRICK,
Appellant.
vs.
THE UNITED STATES,
Respondent.

STATEMENT OF THE CASE.

On the 8th day of May, 1869, the appellant entered into a contract in writing with the Chief Quartermaster of the Department of Dakota, to furnish among other things to the United States, one thousand cords of wood, for the compensation of four dollars and fifty cents per cord, at Fort Ransom, Dakota Territory, and furnished the same in accordance with the terms of said contract. Fort Ransom stood upon a military reservation ten miles square, and containing sufficient wood and timber for the known wants

of the post. The appellant claimed in the court below, that it was the special understanding between him and said Chief Quartermaster at the time said contract was made, that he could cut said wood at any point outside of one and one half mile from garrison, but upon this point the court of claims refused to find (page 17, record.) The contract, however, contained the following stipulation, viz.:

"It is expressly stipulated and agreed, that no traders, sutlers, contractors, civilians, or others, shall be allowed to cut timber about the post of Forts Totten, Abercrombie and Ransom, D. T., or grass about the post of Fort Snelling, Minn., *until all required by the party of the second part*, (appellant) *for purposes herein specified shall have been secured;* and it shall be the duty of the respective post commanders to carry out this stipulation as made and provided in General Orders No. 18, Headquarters Department of Dakota, May 12th, 1868."

The order above referred to was in the following words, viz.:

"*Headquarters, Department of Dakota,*
"St. Paul, Minn., May 12, 1868.

"(General Orders, No. 18.)

"Post commanders in this department will assume control of all timber, wood, hay, and grazing upon the public lands adjacent to their respective posts which are required for the public use thereat. Notice of the reservation of the timber, wood, &c., thus made, will be thoroughly circulated in the manner best calculated to inform all who are or may become interested, in order to avoid all disputes of rights which might arise through ignorance.

"On all such reservations sutlers, traders, and civilians generally, will not be allowed to cut timber, wood, nor hay, nor be allowed to graze animals, until the wants of the garrison are supplied for the year.

"By command of B'v't Maj. General Terry.

"O. D. GREENE,

"Assistant Adjutant General."

The appellant commenced cutting said wood to fill said contract at a point one and one-half miles from the post, where there was an abundance of wood to enable him to fulfill said contract. The post commander ordered him to desist cutting at that point, and to remove beyond the line of the reservation. The appellant then moved four miles from the post, where he cut 310 cords more, when the post commander prohibited him from cutting more on the reservation, and thereupon he went beyond the limits of the reservation and cut the balance of the wood required by said contract, six hundred and fifty cords; and by reason of said orders, and by being compelled thereby to cut the remaining quantity of wood at greater distances from the fort, he was subjected to additional expense in hauling the same to the place of delivery, as follows:

Additional expense of hauling 310 cords, cut within the reservation, four miles to the fort, $688.48; and of hauling 650 cords, cut outside the reservation, seven miles to the fort, $1,443.52, over and above what he would have incurred in hauling the same quantity from said place where he first began to cut.

In September, 1869, after the appellant had commenced hauling the wood cut upon the reservation, he was stopped

by order of the post commander, who would not permit him to haul said wood because it was cut within the lines of the reservation in disobedience of positive orders. The order was overruled by General Hancock, but by reason of the order nine teams of the claimant remained idle thirteen days, to the expense of the claimant of $468.

All the work under this contract was done by Nathan Myrick, for whose use this action is brought, as agent for and in the name of the claimant Francis, who executed and delivered to said Myrick a power of attorney, of which the following is a copy:

"Know all men by these presents, that I, Charles Francis, of St. Paul, Minnesota, have appointed and by these presents do make, constitute and appoint Nathan Myrick, of the same place, my true and lawful attorney, for me and in my name, place and stead, do hereby authorize the said Nathan Myrick to take and receive all vouchers and the same sign and draw the money thereon, under a certain contract between myself, of the one part, and the United States, by General Holabird, deputy quartermaster general, of the other part, dated May 8th, 1869, for the delivery at Fort Ransom, in Dakota Territory, of one thousand cords of wood; granting unto my said attorney full power to perform everything whatsoever required and necessary to be done, as I might or could do if personally present, without revocation.

In witness whereof, I have hereunto set my hand and seal the thirty-first day of May, in the year one thousand eight and sixty-nine.

his
CHARLES X FRANCIS. [SEAL.]
mark.

"Witness as to Charles Francis' mark—

"SAMUEL MAYALL.

"Signed, sealed and delivered in presence of—

"J. P. ALLEN,

"J. A. ALLEN.

[Two twenty-five ct. stamps affixed.]

"STATE OF MINNESOTA,
"County of Ramsey.

Be it known that on this 31st day of May, A. D. 1869, before me personally appeared Charles Francis, to me known to be the individual person described in and who executed the foregoing power of attorney, and he acknowledged that he executed the same freely and voluntarily for the uses and purposes therein expressed.

The erasure, before signing, from the word necessary.

h.
C. X F.
m.

[SEAL.] "J. P. ALLEN,
"Notary Public, Minn."

The Court of Claims adjudged that the petition be dismissed, for the reason that said power of attorney operated as a transfer by the party to whom such contract was given and operated as an assignment of the same, and thereby caused the annulment of the contract.

ASSIGNMENT OF ERRORS.

And now comes the appellant, Charles Francis, in the above entitled cause, and says, that in giving of the judgment aforesaid, in the record a oresaid contained, there is manifest error in this, to-wit: That the said Court of Claims, after finding that the claimant had performed work and labor for the United States, by his agents, servants, and teams, at a cost and expense to him of six hundred and eighty-eight dollars and forty-eight cents, $688.48, and also the additional cost and expense of $1443.52, fourteen hundred and forty-three dollars and fifty-two cents; in all, the sum of $2,131.94, for which no compensation was provided or paid by express or special contract, was not entitled to compensation therefor from the United States under any contract, express or implied, and notwithstanding said finding adjudged that said petition be dismissed.

And there is also error in this: That the said Court of Claims, after finding that the United States, by and through an officer of the army commanding a military post, did detain and appropriate the time and use of nine teams of claimant's with their drivers for nine days on the military reservation about said post, at an expense to claimant of four hundred and sixty-eight dollars, did decide and adjudge that the claimant was not entitled to compensation therefor from the United States, and notwithstanding the same did adjudge that said petition be dismissed.

And there is also error in this: The said Court of Claims did find and decide and adjudge that a power of attorney in the words and figures following, to-wit:

"Know all men by these presents that I, Charles Francis, of Saint Paul, Minnesota have appointed, and by these presents do make, constitute and appoint, Nathan Myrick, of the same place, my true and lawful attorney, for me and in my name, place and stead, do hereby authorize the said Nathan Myrick to take and receive all vouchers and the same sign and draw the money thereon, under a certain contract between myself, of the one part, and the United States by Gen'l. Holabird, Deputy Quartermaster General, of the other part, dated May 8th, 1869, for the delivery at Fort Ransom, in Dakota Territory, of one thousand cords of wood; granting unto my said attorney full power to perform everything whatsoever required and necessary to be done as I might or could do if personally present, without revocation.

"In witness whereof I have hereunto set my hand and seal the thirty-first day of May, in the year one thousand eight and sixty-nine.

his

"CHARLES X FRANCIS. [SEAL.]

mark.

"Witness as to Charles Francis' mark,

"SAMUEL MAYALL.

"Signed, sealed and delivered in presence of

"J. P. ALLEN,

"J. A. ALLEN."

(Two 25 cent stamps affixed.)

was such an assignment and transfer of the contract therein referred to, or of such interest therein as to annul said contract under the provisions of the act of July 17, 1862.

And there is error also in this: That said Court of Claims did decide and adjudge that when a contract with the United States was annulled by an assignment thereof, that the contractor would not be entitled to compensation for work done and material furnished to the United States under the same, at their instance and request after such transfer, and that the United States would not be liable for material furnished and work and labor done under the same, although the United States had elected to have said contract executed notwithstanding such annullment and to hold said contractor to the execution thereof.

And also in this: That the said Court of Claims, after finding a breach of the seventh (7th) stipulation of the said contract, and the damages sustained by the appellant, thereby did refuse to give him judgment therefor, and, notwithstanding, did adjudge that said petition be dismissed.

And also in this: That the said court below did render the judgment aforesaid against the appellant in favor of the United States; whereas, by the law of the land, the same should have been given in favor of said appellants and against the United States.

Wherefore, and for further errors in the record and proceedings apparent, the appellant prays that the said judgment may be reversed, and that judgment may be ordered for the appellant, for the amount aforesaid, against the United States.

POINTS OF LAW.

I. The party receiving the property or labor of another is liable to pay therefor so much as the same cost or was reasonably worth, and in the absence of an express contract the law implies a contract and promise from the receiving party to pay therefor:

Allen vs. McNew, 8 Humph. (Tenn.), 46.
Goodrich vs. Laffin, 1 Pick. (Mass.), 57.
S. P. Fitch vs. Sargent, 1 (Ohio), 352.
Linningdale vs. Livingston, 10 John. (N. Y.), 36.
Raymond vs. Barnard, 12 Johns (N. Y.), 274.
Clark vs. Fairchild, 22 Wendell, 383.

II. The assignment of a contract, or an interest therein, causes the annulment thereof only at the option of the United States.

The United States may receive, under such contract, at the rate of compensation therein specified, or may treat the contract as annulled and pay so much as the material or labor is reasonably worth, but cannot receive without being liable to pay either on special or implied assumpsit. The assignment works no annullment or forfeiture beyond that of the contract, the special promises, and agreements therein. If the contract is favorable to the United States its performance may be enforced, if unfavorable, it may be treated as annulled; but what is received must be paid for at same rate.

Section 3,737, page 742, Revised Stats.

Any other construction leads to absurdity and ought to be rejected.

Potter's Dwarris on Statutes, &c., page 128.

III. The power of attorney in the record is not in legal effect an assignment of the contract or of any interest therein.

It is simply an authority to Myrick to perform everything required and necessary to be done to collect the money on the vouchers issued in payment for work done and material furnished under the same. Power to collect money falling due upon a contract, is not an interest therein, and power to do all work, and furnish all material required by a contract, is not an interest in law in the contract. To raise an interest in a contract, the agreement between the parties must go further, and the length of an agreement by the agent or attorney to do all for the compensation provided in the contract, and absolve the contractor from all obligation thereunder. The relation between the United States and the contractor must be changed to work a transfer. It was not changed by the power in this case, or by any facts found by the court below. There is nothing to show a purpose on the part of the contractor to transfer his interest.

Ford vs. Garner, 15 Indiana, 298.

Cowles vs. Recketts, 1 Iowa, 582.

IV. The object and intent of the law is obvious. It was to protect the United States from dealing with any person under contracts not an original party to the same.

Hence an assignment shall work annullment, and hence the right of action to the United States for a breach shall remain perfect.

The relation originally created shall remain to the end and no new relation be created, and no account nor dealings be had with any other party.

Such a construction of the statute as will effectuate this

purpose, is the only proper construction of such a restraining act.

Potter's Dwarris on Statutes, &c., pp. 144, 145, 146.

ARGUMENT.

The claimant in this case had entered into a contract with the United States, among other things, to furnish and deliver, for the use of the army at Fort Ransom, D. T., one thousand cords of wood, for the compensation of four dollars and twenty cents ($4.20) per cord.

By the terms of the contract, all other persons were prohibited from cutting wood on the reservation about said fort until all required by the party of the second part (claimant herein), for the purposes specified in said contract, had been secured. There is no ambiguity in this stipulation of the contract. The words are:

VII. "It is expressly stipulated and agreed that no traders, sutlers, contractors, civilians, or others, shall be allowed to cut timber about the posts of Forts Totten, Abercrombie, and Ransom, D. T., or grass about the post of Fort Snelling, Minn., *until all required by the party of the second part, for purposes herein specified, shall have been secured;* and it shall be the duty of the respective post commanders to carry out this stipulation, as made and provided in General Orders No. 18, Headquarters Department of Dakota, May 12th, 1868."

For the wood so to be cut, the United States had agreed to pay four dollars and twenty cents ($4.20) per cord.

The award of the contract under the law must be made to the lowest responsible bidder, hence the contract is competent evidence of the value of wood cut upon the reservation in most favorable positions. But the claimant furnished the one thousand cords from a remote point in the reservation, and a point outside the reservation, at an expense above that contemplated by the contract of twenty-one hundred and thirty-two dollars; and this by direction of the defendant. For the post commander at his post, and upon the military reservation pertaining thereto, is vested with and exercises all sovereign power, and his voice and order there are the voice and order of all the people of the United States.

Hence, this extra work and labor done by the claimant, and this extra expense incurred was done and incurred by the claimant, under and by virtue of the orders and directions of the defendant. Therefore the defendant cannot now be heard to say: The legal contract I had with you has been annulled, and therefore I will not pay what this work was worth.

The option of the United States was exercised when it received the benefit of this labor, and afterwards the law will not listen to a complaint which goes no farther than to state that I might have annulled the said contract, and, therefore, you cannot recover, even though I did not annul the same.

In all such cases the voice of the law is in perfect harmony with that of conscience: that whoso has received the material ordered by himself, or the benefit of labor and

time ordered by himself, shall pay the cost, or reasonable value of the same.

If any question is raised as to the authority of the post commander to make the order in the premises, it is enough to answer, that the United States received the advantages and benefits resulting therefrom, and hence is legally liable to pay for the same. Again, the authority of a military post commander to detain the teams and employees of citizens upon a military reservation is absolute.

And when, in time of peace, such an appropriation of private property is made, the law will raise an implied contract to pay therefor what the same was worth, or what the citizen lost by the same. And, therefore, the claimant is entitled to recover, outside of and independent of the stipulations of the contract.

But the claimant is entitled to recover the damages sustained by him by the breach of the VII stipulation of the contract above quoted, independent of all claims based upon an implied contract. That this stipulation was broken by the United States is conceded. The damages resulting to claimant from such breach is found by the court below. But, say that court, you cannot have judgment therefor for the reason that your power of attorney to Myrick worked an annulment of the contract.

The law referred to is in the following words, Revised Statutes, sec. 3,737: "That no contract, or order, or any interest therein, shall be transferred by the party or parties to whom such contract or order may be given, to any other party or parties, and that any such transfer shall cause the annulment of the contract transferred, so far as the United States are concerned; provided, that all rights are hereby

reserved to the United States for any breach of such contract by the contracting party or parties.

The instrument which is claimed to have been in legal effect an assignment in this case is in the words and figures following, to wit:

"Know all men by these presents, that I, Charles Francis, of Saint Paul, Minnesota, have appointed, and by these presents do make, constitute, and appoint Nathan Myrick, of the same place, my true and lawful attorney, for me, and in my name, place and stead, do hereby authorize the said Nathan Myrick to take and receive all vouchers and the same sign, and draw the money thereon, under a certain contract between myself, of the one part, and the United States, by General Holabird, deputy quartermaster general, of the other part, dated May 8th, 1869, for the delivery, at Fort Ransom, in Dakota Territory, of one thousand cords of wood; granting unto my said attorney full power to perform everything whatsoever required and necessary to be done, as I might or would do it personally present, without revocation.

"In witness whereof, I have hereunto set my hand and seal, the thirty-first day of May, in the year one thousand eight and sixty-nine.

his
"CHARLES X FRANCIS. [SEAL.]
mark.

"Witness as to Charles Francis mark—

"SAMUEL MAYALL.

"Signed, sealed, and delivered in presence of—

"J. P. ALLEN,

"J. A. ALLEN."

[Two twenty-five cent stamps affixed.]

Now we submit that this instrument has no such force in law. It does not relate to the contract, but to money that shall become due thereon; not to the work of performance but to the pay for that performance, not to profits or losses upon the contract but to the payment of specific sums that are to be realized for the performance of the contract. Now, what difference in the law would there be if the contractor should enter into an agreement with any of his debtors, that all the money paid to him by the United States, upon a certain contract, should be applied to the extinguishment of his debt.

It is true here is an interest in the contract, and in some cases it might be a very lively interest, but it is no interest in the law. The interest the law contemplates is a right in the thing itself, a title to the contract, or some part thereof, a divestiture of some portion of the contract from the contractor and an investiture in his assignee. An authority irrevocable to collect what shall become due on the contract vests no right, authority or control over the contract. The contractor may execute, or fail to execute. But when he executes, the money that shall become due belongs to his attorney. Many of the government contracts are of such proportions that large means or credit are required to execute them, and if capitalists cannot be secured by irrevocable powers to collect their advances from moneys fall ing due upon the contracts, great embarrassment must necessarily result, the whole aim of the law be lost, and the business interests of the country be rendered more insecure and difficult to conduct.

Consider further where the legal and beneficial interest in such a case is. A, the contractor, is indebted to B, or is

to become indebted to him for moneys advanced and material furnished, or labor performed in the execution of the contract, and to pay the same authorizes B by an irrevocable power to collect the money that shall fall due on the contract. Now, where is the interest? Whose estate is benefited? If a pre-existing debt is paid, A's estate is increased so much, while B's is no larger, but is in different form. It is the same if the money is appropriated to pay a debt to be contracted.

The legal and beneficial interest in the contract remains in A, while B has become lawfully entitled to the money that shall become due on the contract. It certainly can make no difference that "Myrick did all the work under the contract, delivered the 1000 cords of wood, received payment and gave receipts." Of course the court below did not mean that this finding was literally true, for no one man could do all this work; but that as matter of law and fact, Myrick superintended all this. But in the nature of things, Myrick must have been superintended by Francis, and in law all that Myrick did Francis did. And the government dealt and is now dealing solely with Francis.

The court will take judicial knowledge of what is known to all men.

Among the things known to all men, is the fact that many contracts let by the government are to be performed in regions of such extent, that the execution of the same is going on at different points, thousands of miles from each other at the same time, so that the actual personal presence of the contractor is absolutely impossible, and has never been contemplated by the United States.

The contractor is present superintending in person

theoretically only, by *agents, servants, and employees.* This is legal presence and legal superintendence.

As before stated the intent and purpose of the law are plain. It was passed when the contracts of the War Department were numbered by hundreds daily. Political and personal influence had much to do in securing them, each was looked upon as something of a prize and became at once the subject of barter and sale and assignment. Competition was thereby diminished, accounts complicated when part of a contract was performed by one party and part by another, and the doors to fraud and collusion thereon wide open. At this juncture Congress interposed and suppressed this evil.

The government was freed from any legal obligations to the assignee of a contract as assignee. The assignment annulled the contract, but if the contract was a beneficial one to the government, it could compel performance or have damages for the breach. Hence, it must follow, if performance was compelled or allowed, the contract remains in force and the government liable.

The judgment of the court below should be reversed for the errors assigned, and the cause remanded for judgment in favor of claimant for the aggregate amount found by the court of claims.

JOHN B. SANBORN,
Att'y for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHARLES FRANCIS, FOR THE USE OF NATHAN MYRICK,
vs.
THE UNITED STATES.
} No. 556.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHARLES FRANCIS, FOR THE USE OF Nathan Myrick,
vs.
THE UNITED STATES.
} No. 556.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

The *facts* in this case are set forth in the record, folios 23 to 26, inclusive; and otherwise seem in general sufficiently stated in the brief of the learned counsel for the appellant.

The contract which forms the basis of the claim was for the delivery at Fort Ransom, in 1869, of 1,000 cords of wood, more or less (Record, p. 7), and it appears that under such contract 1,003 *cords were delivered, and the money therefor paid and receipted for in full* (Finding No. 9, Record, p. 14).

The present claim is that the United States broke the contract, by not allowing the appellant to cut the wood at a certain place near the fort, whereby he was compelled to obtain it at a greater distance, and thereby to incur an expense greater, by $2,132, than if such breach of contract had not occurred, (Finding No. 7, Record, p. 14); and, further, that the United States *obstructed the delivery* of the wood, so as to cause a further damage of $468 (Finding No. 5, Record, p. 3). In all, the claim is for $2,600.

I. Nothing is said in the contract (Record, folio 12, &c.) *as to the place* at which the wood was to be cut, excepting that, by article VII, *it was expressly stipulated and agreed that no traders, sutlers, contractors, civilians, or others should be allowed to cut timber "about the post" of Fort Ransom until all required by claimant for the purposes therein specified should have been secured* (Record, p. 8).

A question presented in this connection is whether this court can say as matter of law that a place about *seven miles from the fort* (Finding No. 4, end) is not *about the post*, such place being also not more than a mile beyond the lines of the *reservation* belonging to such fort. (Same Finding.)

It will be seen from Finding No. 7 that the claimant has placed this part of his case upon the assumption that a place no more than *four miles* from the fort (Finding 4) is not *about the post;* and that this court, without the help of any circumstance except that of there having been a sufficiency of timber to supply the contract at such a place, will say as matter of law that the expression "about the post,"—describing a place for cutting

wood for the use of the fort, meant *one mile and a half* miles therefrom, and not *four*, or, *a fortiori*, *seven*, miles.

It seems that this is a point which in any state of the case would be difficult to sustain, and that such difficulty is increased by the suggestion that the propriety of clearing away the timber upon a military reservation regularly made (Record, folios 23, 24) must be one to be decided in general by the military authorities thereof; and that if a contract framed like the one in question is to be taken as giving the contractor full authority to cut the timber *upon the lands of the United States* "about the post," yet its want of particularity in that respect suggests that such license was intended to be subject to modification by any *public* consideration that might occur to the post authorities. In the absence of *a manifest exclusion from ALL places "about the post"* from which timber might reasonably be supplied, a court will not interfere with the regulations of the fort authorities.

It is true that there was no reservation in existence when the contract was made. The former was finally established in January, 1870, upon a Survey, &c., made ten days after the execution of the contract. (Finding 2.) But vaguely worded expressions in the contract were of course subject to be construed by acts of State done in the interests of the public at large, and very probably the erection of this reservation was actually anticipated by the parties to the contract.

The expression is "about the *post*," not *fort*, and it may be suggested that the word *post* in such connection included *reservation*. It is not said *at* the post, but *about*, the word post being intended to designate the post as defined on the 8th of May, 1869, or as it might thereafter be defined under any future legitimate executive order, *i. e.*, with or without a reservation.

It will not be forgotten here that I have been considering the capabilities of a very vague expression, and that it was incumbent upon the claimant to use definite words in this connection. No person making a contract with the Government can take benefit by doubtful language therein.

The above considerations apply to every item in the claim. As to that for *obstructing* the hauling of the wood cut *four miles* from the fort, it will be observed that this wood was cut after the commanding officer of the fort had forbid the claimant from cutting wood *anywhere upon the reservation.* It was therefore proper for him, so long as his order remained unrevoked by himself or a superior officer, to enforce obedience thereto, even if such enforcement were the rather unsatisfactory one of *not recognizing* an accomplished act of disobedience as done in execution of the contract. He might, therefore, well prohibit the claimant from hauling to the fort wood cut in disobedience of his order. And General Hancock's overruling of such order did not make the commandant's previous enforcement thereof illegal. The operation of the general's order was only prospective, giving the claimant a right so to supply that wood thereafter.

It is a rather curious consideration in this connection that the claimant insists that the place four miles from the fort *was not* "*about the post*" within the meaning of the contract. How, then, has he any right to complain that he was prevented from getting wood there—either from cutting it there or from hauling it thence—after it had been cut? Both he and the commandant (whom he has instructed his learned counsel to say represented the United States fully by his action in this matter) agreed that that was not a place to get wood from, and

however true it may be that the United States will pay *quantum valebat* for all that was actually accepted from such place, yet they are under no liability to pay damages for having once enforced the view *common to both parties*, viz, that the four-mile place was not within the contract. The parties *differed* as to the *nearest* place (the claimant asserting and the United States denying), and, also, as to the *farthest* place (the United States asserting and the claimant denying); but as to the intermediate place, *both denied*, and, therefore, the United States have incurred no liability in respect thereto other than what arises from the bare fact of their having already received the timber cut therefrom.

II. But there is another and distinct reply to the case of the plaintiff, viz: He has received of the United States certain money *in full* of the wood by him supplied.

Supposing the claimant's theory as to the place where he had a right under the contract to procure the wood, to be correct, upon his being prohibited so to procure it he might have abandoned the contract and obtained damages.

But if instead of abandoning, he chose to acquiesce in the construction placed upon the contract by the United States, he would be entitled, upon performance, to be paid only according to the contract.

The above seems to be the case presented in the record.

Still, if the claimant could successfully contend that under the circumstances he is entitled to a *quantum valebat* for the wood delivered, which value includes all the extra expense of hauling wood *so far*, and of being *obstructed* in hauling, the reply is that for all that, it must be assumed, upon the findings, that he has already

been paid. The settlement already had is a virtual *accord and satisfaction* as to all differences incidental to the contract for wood, whether the price finally agreed upon were that originally specified in the contract, or some other amount.

Of course no mere *tort* committed by officials of the United States can be considered in this connection.

It seems, upon the whole, that whether the claimant sues upon the special contract, or virtually upon a *quantum valebat*, the reply in both cases equally is that he has been paid.

I have not put this case upon objection to the *assignment* of the contract by Francis to Myrick. The findings of fact, other than that with regard to the written power of attorney, seem to be consistent with a *bona fide* execution of the contract by Francis through Myrick *merely as his agent*. The agency in *cutting and hauling wood*, &c., does not appear to have been in writing, or *irrevocable;* and there is no finding of fact that marks it with any illegitimate purpose. The written power, which alone was irrevocable, (finding 8), extends only to the receipt of *vouchers*, and the drawing of money *thereon*. This has all been executed. No question in connection therewith remains.

I submit this observation as a reason for arguing the case expressly as above; and for anything in connection with the matter of *assignment* I rely entirely upon the learned Opinion of the court below, which is believed to contain a clear and correct statement of the law upon that question.

S. F. PHILLIPS,
Solicitor-General.